

AGENCY NAME

2018 Voluntary Separation Incentive Program - Agreement and Release Form

A. **PARTIES:** This Settlement Agreement and Release (Agreement) is entered into between:

1. The State of North Dakota, acting by and through **AGENCY NAME** (Employer); and
2. _____ (Employee).

B. **RECITALS:** The following recitals form the basis of this Agreement:

1. Employee asserts he/she has not has previously participated in a voluntary separation program with the state of North Dakota from January 1, 2017 to present.
2. Employee's employment will terminate on _____.
3. Employer determined entering this Agreement provides financial savings or reduce costs to Employer.
4. The parties have independently determined it is beneficial to enter this Agreement on the terms and conditions set forth below.

C. **AGREEMENTS** Employer and Employee agree to resolve this matter as follows:

1. In consideration for the release of all claims asserted or unasserted arising out of or relating in any way to Employee's employment, Employee will receive a severance payment based on the employee's selection of two options and any additional payments representing all accrued annual leave and sick leave, less withholding amounts, including deductions for retirement, State and Federal taxes, and FICA. This payment will be in the nature of wages for tax purposes and will be processed through Employer's payroll department. The payout of sick leave will be calculated at 10% of the employee's accrued sick leave balance as of the date of employment termination if Employee has been employed with the State of North Dakota for 10 consecutive years. If Employee has not been employed with Employer for 10 consecutive years, no payout of sick leave will occur.

2. In exchange for the severance payment, Employee voluntarily and unconditionally renounces all claims and rights arising directly or indirectly from Employee's employment. These claims include any rights Employee might have against Employer and its agencies, including **AGENCY NAME**, their subsidiaries, successors and assigns, and their present and former officers, administrators, employees, and agents both in their individual, personal, and official capacities.

This release includes claims for violations of the North Dakota Human Rights Act (NDCC 14-02.4), Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, and other federal, state, or local civil rights laws based upon age, sex, disability, protected activity, or other protected class status, constitutional or statutory violation, breach of contract, constructive discharge, fraud or misrepresentation, defamation, intentional or negligent infliction of emotional distress, breach of any covenant of good faith and fair dealing which may exist, promissory estoppel, negligence, or other breach of duty, wrongful termination of employment, retaliation, harassment, breach of public policy, and any other claims from unlawful employment practices, whether legal or equitable. Employee also voluntarily and unconditionally waives all rights under NDCC 9-13-02.

This release also includes any claims which could have been brought in any forum or court or pursuant to any grievance or appeal procedure. Employee agrees not to bring any lawsuits, institute any claim or action for damages, or otherwise authorize any party or entity to institute any claim or action for damages. Employee also waives any right to money damages or other relief awarded by a governmental agency or awarded as the result of any action or proceeding instituted by a governmental agency related to Employee's employment.

3. This Agreement may not be construed to prohibit Employee from filing a charge with the Equal Employment Opportunity Commission (EEOC) or from fully cooperating in any investigation, proceeding, or action instituted by the EEOC. However, Employee releases the rights to file a court action and to seek individual remedies or damages in any EEOC-sponsored court action.

4. Employer, its officers, administrators, employees and agents, do not owe Employee anything directly or indirectly other than what Employee will be receiving under this Agreement.

5. Under the Age Discrimination in Employment Act, if applicable, Employee has had the terms of Employer's Voluntary Separation Offer open for acceptance by Employee for a period of at least 45 calendar days during which Employee has had the opportunity to consider whether to accept this Offer and seek advice of counsel. Employee agrees that any changes to this Offer, whether material or immaterial, will not restart this acceptance period.

6. Employee may rescind this Agreement within 7 calendar days from the execution of the Separation documents to reinstate any federal claims Employee may have under the Age Discrimination in Employment Act or any other federal or state civil rights act by informing Employer of Employee's intent to revoke. Rescission must be in writing and delivered to Employer, in care of **AGENCY NAME, Address, City, State Zip** either by hand or by mail within the rescission period. If mailed, any rescission must be properly addressed to Employer, postmarked within the 7 day period, and sent by certified mail. If Employee rescinds this Agreement, or any part of it, the remaining provisions of this Agreement may be voided by Employer. If the Agreement is voided, Employee will not be entitled to any of the considerations specified in this Agreement.

7. Employee is responsible for obtaining his/her own legal, tax, and financial planning advice for any questions relating to this Agreement.

8. If Employee breaches any provision of this Agreement, Employer will have no further obligations under this Agreement and will be entitled to repayment of all monies paid to Employee. It is impossible to measure in money all damages that will accrue to Employer if any of Employee's obligations under this Agreement are breached. Employee therefore waives the claim or defense that Employer has an adequate remedy at law.

9. If Employee returns to state employment within three months of the separation date, he/she agrees to repay a prorated portion of the severance payment to the former employing agency.

10. This Agreement does not constitute an admission by Employer, its officers, administrators, employees, or agents of wrongful action against Employee or violation of any of Employee's legal or constitutional rights.

11. This Agreement supersedes and terminates all previous written or oral agreements and communications between the parties.

12. This Agreement must be construed and enforced in connection with state of North Dakota laws.

EMPLOYEE HAS READ THIS AGREEMENT CAREFULLY AND ACKNOWLEDGES THE TERMS OF THIS AGREEMENT ARE UNDERSTANDABLE TO EMPLOYEE AND ARE VOLUNTARILY ACCEPTED. EMPLOYEE HAS BEEN DIRECTED TO DISCUSS THE TERMS OF THIS AGREEMENT WITH AN ATTORNEY OF HIS/HER CHOOSING. EMPLOYEE AGREES TO ALL THE TERMS AND CONDITIONS STATED IN THIS AGREEMENT AND RELEASE. IN SIGNING THIS AGREEMENT EMPLOYEE HAS RELIED SOLELY UPON HIS/HER OWN JUDGMENT, BELIEF, AND KNOWLEDGE AND HAS NOT BEEN INFLUENCED BY OR RELIED ON ANY STATEMENTS OR EXPLANATIONS MADE BY THE EMPLOYER OR ITS REPRESENTATIVES NOT CONTAINED IN THIS DOCUMENT.

Dated this ____ day of _____, 2018

Employee Signature

Dated this ____ day of _____, 2018

Agency Director / Designee Signature

Distribution of final signed document:

Original – HR / Agency Designee for processing
Copies – Employee
 HRMS